IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.Rev.Pet.No. 595 of 1998(C)

CRRP.51/1997 of SESSIONS COURT, ALAPPUZHA
ST.237/1995 of CHIEF JUDICIAL MAGISTRATE'S COURT, ALAPPUZHA
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REVN. PETITIONER/CR.PETITIONER/ACCUSED

A.V.SADANANDAN, PROVISION STORE NO.AMC13/422, MALIKAMUKKU, ALAPPUZHA.

BY ADV. SRI.B.RAMAN PILLAI

RESPONDENTS/COMPLAINANT & STATE
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1. THE FOOD INSPECTOR, ALAPPUZHA MUNICIPALITY, ALAPPUZHA.

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR.P.RAVINDRA BABU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K. BALI, C.J.

Crl.R.P.No.595 of 1998

Dated, this the 22nd day of November, 2006

ORDER

V.K.Bali,C.J.(Oral)

Petitioner was tried for offences under Sections 2(ia) (a), (m), 7(i), 16(i) (a) (i) read with Rule 5 Appendix B.A.17..11 of the Prevention of Food Adulteration Act and he was acquitted by the learned Chief Judicial Magistrate, Alappuzha vide order dated 2nd April, 1997. The Food Inspector carried a revision against the order aforesaid which has been allowed by the learned Sessions Judge vide order dated 6th April, 1998. It is against this order passed by the revisional court that the present revision has been filed by the accused.

2. The learned counsel appearing for the petitioner vehemently contends that in view of sub-section (4) of Section 401 of the Code of Criminal Procedure, where an appeal is provided in a Code, but the same is not filed, no proceeding by way of revision should be entertained at the instance of the party who could have appealed. He further contends that by virtue of

the provisions contained in sub-section (4) of Section 378 of the Code of Criminal Procedure an appeal was indeed competent in a matter emanating from a complaint to the High Court, even if an order of acquittal was passed. If appeal was competent to the High Court against the order of acquittal in the case of accused, the revision would be barred, contends the counsel. The provisions relied on by the learned counsel read as follows:

> "**401. High Court's powers of revision.**- xx
>
> (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed."

> "**378. Appeal in case of acquittal.- xx**
>
> (4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

3. The contention raised by the counsel for the petitioner is unassailable and for that precise reason it appears that the counsel for the respondents had nothing to urge in opposition to the contention of the learned counsel for the petitioner.

In view of the discussion as made above the order dated 6th April, 1998 passed by the learned Sessions Judge, Alappuzha is set aside and this revision is allowed.

V.K. BALI,
CHIEF JUSTICE.

vns